

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1049 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT
Versus
GOVINDBHAI VALABHAI & ORS

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Appearance :
MR KC SHAH for Appellant
Opponents served

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA**Date : 23/02/2007****ORAL JUDGMENT**

1 This Appeal is preferred by the State under Section 378
of the Code of Criminal Procedure against the judgment and order

delivered by the Chief Judicial Magistrate, Amreli, on 4th of July, 1997, acquitting all the 11 accused i.e. Respondents herein, in Criminal Case No. 118 of 1993, for the offences punishable under Sections 147, 148, 149, 325, 324, 323, 504, 447, 337, 506(2) of the Indian Penal Code.

2 Learned APP Mr. K.C. Shah was heard in detail in respect of this Appeal while Notices were served upon all the 11 accused, but none appears on behalf of any of the respondents. This Court has undertaken a careful scrutiny of the entire record of the Trial Court along with learned APP and after detailed scanning the evidence on record, this Appeal is being disposed of, though the respondents were served but none appears before this Court in the Appeal.

3 The prosecution case revealed in First Information Report offered by injured witness Gigabhai Mangabhai of village Sarambhada, Taluka - Amreli, on 3rd of September, 1992 before Amreli (Rural) Police Station, which was registered as Amreli Police Station Crime Register No. I-161 of 1992. Accordingly, after the incident occurred on 3rd of September, 1992, at about 4.00 p.m. at village Sarambhada, when complainant Gigabhai Mangabhai was taken to Amreli Civil Hospital. He offered his complaint there and the said complaint is placed at Exhibit-70. The prosecution case disclosed as per the First Information Report that at about 4.00 p.m.

on 3rd of September, 1992, complainant Gigabhai Mangabhai was at his residence. At that time, his neighbour and the accused Harijan Dudabhai Bhikabhai, Pithabhai Bhikhabhai, Naranbhai Bhikhabhai, Raghavbhai Bhikhabhai, Valabhai Hirabhai, Babubhai Valabhai, Haribhai Valabhai, Govindbhai Valabhai, Pratapbhai Pithabhai, Bavchandrabhai Pithabhai and Prabhaben Dudabhai, forming an unlawful assembly, came to the courtyard of the residence of Gigabhai Mangabhai. As soon as all the accused reached in the courtyard, they started abusing Gigabhai Mangabhai. Gigabhai Mangabhai requested them not to give abuse. In the meanwhile, accused No.11 Pithabhai Bhikhabhai, who had a dharia in his hand, gave a blow of dharia to Gigabhai Mangabhai which landed on his head and, therefore, complainant Gigabhai Mangabhai sat down on the ground. Accused No. 8 Raghavbhai Bhikhabhai, who had a stick in his hand, gave a blow of stick on right hand of Gigabhai Mangabhai. On account of injuries, Gigabhai Mangabhai started shouting for the help and, hence, his father Mangubhai Kalubhai Parmar and his mother Sumalben came at the place of incident running and tried to persuade the accused, but accused No.8 Raghavbhai Bhikhabhai gave blow of stick on the face of his father and, therefore, the father of Gigabhai Mangabhai also sat down on the ground. In the meanwhile, accused No.11 Pithabhai Bhikhabhai, who had a dharia in his hand, gave a blow on the head of Sumalben, mother of the complainant and, therefore, she also sat down on the ground. In the meanwhile,

accused No. 7 Dudabhai Bhikhabhai also gave two blows of stick on left shoulder of Sumalben and on her back. She also started shouting. Thereupon, Amrabhai, brother of the complainant and other brothers, Mansukhbhai, Veerabhai and wife of brother Jayaben, came running at the place of incident. They intervened and persuaded with supplication to the accused not to beat any of them, but accused No. 11 Pithabhai Bhikhabhai inflicted a blow of dharia on the head of Amrabhai and accused No. 7 Dudabhai Bhikhabhai also inflicted a stick blow on left shoulder of Amrabhai, he also grounded himself. Accused No. 4 Naranbhai Pithabhai, who had a dharia in his hand, inflicted a blow of dharia on the head of Mangabhai and he was also grounded. Accused No.7 Dudabhai Bhikhabhai inflicted a blow of stick on right hand of Jayaben and she also on account of injury sat down on the ground. Accused No.5 Haribhai Valabhai, who had a stick in his hand, inflicted a blow of stick on the back of Veerabhai and he also sat down on the ground on account of injury. Accused No.1 Govindbhai Valabhai, who had an iron pipe in his hand and accused No.3 Pratabbhai Pithabhai, who had also an iron pipe in his hand, were present there. Accused No.2 Bavchandbhai Pithabhai had an iron rod in his hand. Accused No. 9 Prabhaben had also a rod in her hand and accused No. 10 Valabhai Hirabhai and accused No.6 Babubhai Valabhai had bricks with them and with those weapons they started beating prosecution witnesses at random. All the seven persons of the family, who were injured,

started shouting and therefore independent witnesses Kantilal Jetashankar, Hasmukh Jetashankar, etc. came running at the place of offence and persuaded all the 11 accused, and on their persuasion, accused left the place of incident. While the accused were leaving from the scene of offence, all of them threatened Gigabhai Mangabhai Complainant that on that day he could escape but he would be done to death in future. Thereafter, all the seven injured, in private vehicle, came to the hospital at Amreli for treatment. For the reasons of occurrence of this incident, it is stated in the FIR that, on that day, wife of complainant Gigabhai Mangabhai and wife of accused Dudabhai Bhikhabhai have altercations about the water, which was dropping on the house of the accused from the roof of the house of the complainant and which quarrel ensued in the above said incident, for which the complaint came to be filed. The said complaint was investigated by Natwarsinh Govindsinh Rajshi, the then PI of Amreli (Rural) Police Station and after investigation, he submitted the charge sheet for the above said offences against all the 11 accused.

4 Vide Exhibit - 44, charge was framed against all the 11 accused by learned Judicial Magistrate, Amreli, on 29th of May, 1993. All the 11 accused pleaded not guilty and, therefore, prosecution examined following witnesses :

Injured witnesses (i) PW-1 Gigabhai Mangabhai, Exh. 69; (ii)

PW-2 Amrabhai Mangabhai, Exh. 72; (iii) PW-3 Mansukhbhai Mangabhai, Exh. 73; (iv) PW-4 Jayaben Amrabhai, Exh. 76 and (v) Sumelben Mangabhai, Exh. 77.

Independent eye witnesses: (i) PW-6 Hasmukhbhai Jetashankar, Exh. 78; (ii) PW-7 Kantibhai Jetashankar, Exh. 79; (iii) PW-12 Govindbhai Somabhai, Exh. 99 and (iv) PW-15 Daniben Mulabhai, Exh. 106.

Panch witnesses : (i) PW-8 Bhikhabhai Kamabhai, Exh. 84 panch of scene of offence; (ii) PW-9 Dhalsukhbhai Kanjibhai, Exh. 86 panch of recovery of weapons from the accused; (iii) PW-10 – Dhirubhai Tejabhai, Exh. 88, panch of recovery panchnama; (vi) PW-13, Noorjibhai Hirabhai Rathod, Exh. 100, who registered the offences and given the investigation to PSI; (v) PW-14 Khumansinh Harisinh, Exh. 104, panch of recovery panchnama; (vi) PW-16 Rajakbhai Isabhai, Exh. 108, panch of recovery of panchnama; (vii) PW-17 Dhohabhai Lakhubhai, Exh. 108, panch of recovery panchnama and (viii) PW-18 Ishwarbhai Gelabhai, Exh. 111, panch of recovery of bricks panchnama.

Police witnesses : (i) PW-11 Bhikhubhai Devshankar Barisagar, Exh. 92 who was in-charge PSO when the FIR was offered and registered at Amreli (Rural) Police Station, (ii) PW-13, Noorjibhai Hirabhai Rathod, Exh. 100, who registered the offences

and given the investigation to PSI and (iii) PW-20 Natwarsing Govindsinh Rajshi, Exh. 124 and medical evidence PW-19 Dr Suryakanth Maganlal Masrani, Exh. 112.

5 As aforesaid, the prosecution examined as many as 20 witnesses. Out of them, six injured witnesses and three independent eye witnesses.

6 The prosecution established the injuries on the body of each injured, as named above, as under, through the evidence of Dr. Suryakant Maganlal Masrani, PW-19.

(i) Exhibit- 113 - Sumelben Mangabhai Parmar :

Description of Injuries - H/o Assaulted injury :

- O/E - CLW (2" x 1/3" irregular margins & oblique in shape. It was scalp deep and with fresh bleeding on left parietal region of head.
- Diffuse swelling tenderness (roughly circular and with 3 cm diameter) on dorsal aspect of left forearm 2 1/2" below elbow .

(ii) Exhibit- 115 - Amrabhai Mangabhai :

Description of injuries : H/o Assaulted injury

- CLW (2 cm x 1/2 cm) scalp deep, fresh bleeding oblique in position on Rt. Temporal region of head.
- Incised wound (1 1/2 cm x 1/4 cm) verticle on medial side of left side at junction of L 1/3 and m 1/3 of leg, muscle deep wound, fresh bleeding.
- Everted skin flap with irregular margin with fresh bleeding

on dorsum of distal inter phalangeal joint on middle finger of left hand.

- Tenderness diffuse swelling over left shoulder.

(iii) Exhibit - 116 Jayaben Amrabhai :

Description of injuries - H/o Assaulted injury

- O/E Incised (2" x $\frac{1}{4}$ ") verticle muscle deep with fresh bleeding on dorsum of Rt. forearm just below elbow.
- On X-ray II olecranon process of Rt. ulna.

(iv) Exhibit - 117 Gigabhai Mangabhai :

Description of injuries - H/o assaulted injury

- CLW (c m x $\frac{1}{2}$ cm) irregular shaped oblique on left frontal region of head, bone deep with fresh bleeding.

(v) Exhibit - 118 Mangabhai Kalabhai Parmar:

Description of injuries :

- CLW (1 $\frac{1}{2}$ cm x $\frac{1}{2}$ cm) muscle deep on left upper eye lid laterally, fresh bleeding.
- CLW (1 cm x $\frac{1}{4}$ cm) muscle deep on left chick below lateral end of eye, bleeding fresh.

Exhibit - 119 - Mansukh Mangabhai Pamar

Description of injuries : H/o Assaulted injury

O/E Pt. Conscious. TPR - N, No ENT bleeding, pupils BEFL, no vomiting, no unconsciousness.

L/E CLW (4cm x $\frac{1}{2}$ cm) oblique, scalp deep with fresh bleeding on frontal region of head.

7 Out of this six injured witnesses, the prosecution has examined five injured and the father of the complainant has not

been examined. According to above certificates, each of the injured had injuries.

8 Learned APP Mr. K.C. Shah has vehemently argued that out of six injured witnesses five are examined by the prosecution and injuries are proved. It is submitted that the evidence of injured witnesses is required to be weighed in different manner as per the law because the presence of such witnesses at the place of incident cannot be doubted. It is submitted that though there are contradictions in the evidence, but those contradictions are not going to the root of the case, and when five injured witnesses have been examined by the prosecution and when injuries are proved, the learned Magistrate ought to have placed reliance on these witnesses and ought to have convicted the present respondents. On the contrary, the findings of the learned Magistrate appears to be solely based on contradictions in the evidence of injured witnesses and, therefore, the findings are perverse and requires to be interfered with. It is submitted that the independent eye witnesses have not supported the prosecution case, but the injured five witnesses have proved the case of the prosecution beyond reasonable doubt. It is, therefore, submitted that the Appeal be allowed and the judgment impugned be reversed and respondents are required to be convicted.

9 This is an appeal against the acquittal and the law is well

established to deal with the appeals against the acquittal. Undoubtedly, the High Court has same powers to assess the evidence and come to its own finding as possessed by the High Court in an appeal against the order of conviction. Undoubtedly, the Court has all powers in an appeal against an order of acquittal and those powers are nothing less than the powers the High Court possesses while hearing an appeal against an order of conviction in respect of reconsidering the whole issue and reappraise the evidence and come to its own conclusion and finding, but at the same time, it must be noted that in appeal against the acquittal, the High Court must consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the Trial Court that the accused is entitled to acquittal. It is also an important aspect that while re-appreciating the evidence when two views are possible, the cardinal principle that the view favourable to the accused be accepted by the courts.

10 In view of above, it would be necessary to go through each reasonings assigned by the Magistrate for the acquittal of the accused. Those reasonings are under :

- i) The learned Magistrate appreciated the evidence of injured and eye witnesses and found contradictions going to the root of the case.

ii) PW-1 Gigabhai Mangabhai in contradiction to his statement in First Information Report stated in his chief examination that who inflicted injuries to his mother, he did not know. He also did not know the injuries inflicted on the body of his father. An iron pipe was hit by Raghavbhai Bhikhabhai on the hand of injured Jayaben. In his cross-examination also he stated that the first blow was landed on him, but out of which dharia from the muddamal articles, that he could not say. In his complaint before the police, the complainant has stated that he has received injuries of dharia while according to the complainant he has stated something else. There is contradictions between his deposition and the complaint about injuries given by accused Raghavbhai Bhikabhai. About the injuries received by his father, his mother, there is contradiction. The learned Magistrate found contradictions going to the root of the case and, therefore, he did not place reliance on the testimony of this injured witness.

iii) While considering the evidence of PW-2 Amrabhai Mangabhai, Exh. 72, a contradiction between PW-1 and this witness, which was noticed by the learned Magistrate in respect of important aspect of the

prosecution case. This witness stated that accused Pitabhai Bhikhabhai gave blow by iron pipe while complainant stated that Pitabhai inflicted two blows by dharia on his head. This witness further stated that on account of injury he had been unconscious and, therefore, he did not state anything about the further injuries caused to other witnesses and, therefore, the learned Magistrate did not place reliance on this witness. Contradiction in respect of the weapons on the hands of accused is admitted by him in his deposition and, therefore, the learned Magistrate was reluctant to place reliance on this injured eye witness.

iv) While considering the evidence of PW-3, Exh. 73 Mansukhbhai Mangabhai - injured eye witness, learned Magistrate came to the conclusion that this witness is not reliable as witness stated that accused Naranbhai Bhikhabhai inflicted a pipe blow on his head while in Exh. 72 witness Amrabhai Mangabhai did not state that accused Naranbhai Bhikhabhai inflicted pipe blows on Mansukhbhai Mangabhai. Moreover, this witness did not say anything further about the incident even though he was present all through out during the incident. Learned Magistrate has noted that in examination-in-cross, this witness admitted that he

could not say that who inflicted first blow and who started the quarrel. Except a blow given to him, the witness stated that he did not know anything. According to learned Magistrate, this was contraction in the prosecution case going to the root of the case and, therefore, reliance was not placed on this injured witness.

- v) While appreciating the evidence of Jayaben Amrabhai - Exh. 76, she has stated that accused Dudabhai Bhikhabhai inflicted pipe blows on her right hand, except to some extent, complainant no other witness supported the very version about this blow. Not only that, the complainant vide Exh. 72 stated that accused Pithabhai Bhikhabhai (not accused Dudabhai Bhikhabhai) inflicted pipe blows on injured witness Jayaben. While original prosecution case which was disclosed in First Information Report, the fact was narrated by the complainant that accused Dudabhai Bhikhabhai inflicted two blows of sticks which landed on left shoulder of Jayaben and on her abdomen. This witness further attempts to involve other accused in the incident as he stated that accused Raghavbhai Bhikhabhai inflicted a stick blow on her mother-in-law. This is not the original prosecution case and none of the

witnesses supported this version. This contradictions, according to learned Magistrate, has been proved and, therefore, no reliance on the testimony of this injured witness can be placed.

vi) Last injured witness Exh. 77 Sumelben Mangabhai stated, according to learned Magistrate, that accused Pithabhai Bhikhabhai gave a dharia blow injury on her head while no other witness i.e. Complainant Exh. 69 PW-1 Gigabhai Mangabhai, Exh. 72 PW-2 Amrabhai Mangabhai; Exh. 73 PW-3 Mansukhbhai Mangabhai or PW-4 Jayaben Amrabhai Exh. 76, corroborates the say of Sumelben. Not only that, but this fact she did not state before the police and this contradiction goes to the root of the prosecution case. The learned Magistrate, therefore, did not place reliance on this witness on this count and further this witness though was present all through out the incident, did not state anything about the injuries received by other witnesses.

vii)The independent eye witness Exh. 78 Hasmukhbhai Jetashankar, Exh. 79 Kantibhai Jetashankar; Exh. 106 Dhaniben Mulabhai did not support the prosecution case.

11 All the panchas of the panchnamas have not supported the prosecution case and they were declared hostile nor these panchanams could be proved according to law through the deposition of police officers.

12 Learned Magistrate, therefore, come to the conclusion that though six injured witnesses having injuries, which is proved by the evidence of Dr. Suryakant Maganlal Masrani, but on account of above said reasons, no reliance can be placed on the injured witnesses as mere proving of the injuries would not fasten criminal liability upon the accused.

13 The above are the reasons for acquittal. This Court has gone through each reasons given by the learned Magistrate for acquittal with reference to the evidence recorded. This Court has undertaken independent appreciation and assessment of the evidence recorded during trial. It is found that all the five injured witnesses examined are interested witnesses. True it is that, so far as injured witness is concerned, his presence cannot be denied at the place of incident and his evidence therefore bears more weight than any ordinary eye witnesses as his injuries are proved by the medical evidence, but there may be cases wherein reliance cannot be placed from the testimony of injured witnesses for the reasons. Each case rests on its own facts. While assessing the evidence of injured witnesses, this Court also finds that there are also material

contradiction amongst five injured witnesses in depositions before the court and each witnesses found contradicting his version to some extent given by them before the police. On careful scrutiny and scanning the evidence, it is found that the learned Magistrate has come to a right conclusion that the contradiction finds in the evidence of each injured witnesses goes to the root of the prosecution case and, therefore, none of the injured witnesses, though injuries on their bodies are proved or credit-worthy, inspires any confidence as to connect the accused with the crime. This Court finds that the contradiction as narrated by the learned Magistrate by way of reasons for the acquittal are found in the evidence of each witnesses. There is no doubt that those contradictions are going to the root of the prosecution case and, therefore, there is big gap between the original prosecution version and what is deposed by the witnesses before the Court. As aforesaid and appreciated, none of the independent eye witnesses supported the prosecution version. All the five injured witnesses examined are interested witnesses and when they failed to inspire confidence on account of material contradiction in their evidence, the learned Magistrate rightly did not place any reliance on the testimony of these injured witnesses.

14 On careful scrutiny of the evidence, the learned Magistrate failed to deal with one more aspect, which this Court finds that for the same incident, the accused has already filed a

cross complaint which is evident from the evidence of the Investigating Officer PW-20 Natwarsinh Govindsinh Rajshi. In his examination in cross, Investigating Officer has admitted that there was a cross case for the same incident filed by the accused parties. It is also admitted by him that in the said incident, accused party had also received injuries. It also be noted that in further statement each of the accused stated that the quarrel had taken place. Therefore, this is a case wherein it was the bounden duty of the prosecution to explain the injuries sustained by the accused parties, but prosecution failed to explain such injuries on the accused party, though the law in this aspect is made clear by the Supreme Court in the matter of RAM SUNDER YADAV vs. STATE OF BIHAR, as reported in (1998) 7 SCC 365; in the matter of VIJAYEE SINGH vs. STATE OF UP, as reported in (1990) 3 SCC 190 and in the matter of BHABA NANDA SARMA vs. STATE OF ASSAM, as reported in (1977) 4 SCC 396 and as established by the Apex Court in the matter of RAJENDER SINGH vs. STATE OF BIHAR, as reported in (2000) 4 SCC 298, though non-explanation of injuries on the accused by the prosecution is not always fatal to the prosecution case when considering the prosecution case it is found that the same is accepted that the evidence is clear, cogent and credit-worthy, the non-explanation of the injury on the accused *ipso facto* cannot be a basis to discard the entire prosecution case. However, if the prosecution offers any explanation regarding injuries found on the accused and that any explanation regarding the injuries found on

the accused shows that the evidence of prosecution witness relating to incident is not true or at any rate, not wholly true, and further there is a gap between prosecution case and the injured witnesses as to version, then non-explanation of the injuries on the body of the accused becomes fatal to the prosecution case. This is so because in such circumstances, there is every possibility that the prosecution witnesses conceal the genesis of the incident. This is more so when the evidence recorded of the injured witnesses of the prosecution is not true or is not wholly true or is found not credit-worthy. Therefore, one more reason for confirming the acquittal of the accused in this case is that it is established that accused had injuries in the same incident and had filed a cross case and no explanation as such coming from the prosecution witness. Moreover, in the circumstances that, as aforesaid, the evidence of prosecution witnesses stated with the contradictions which leads to discredit them. Therefore, after going through the case entirely and scanning the evidence recorded by the learned Magistrate as well as going through the each of the reasonings given by the learned Magistrate for acquittal, this Court finds that the judgment and order of acquittal impugned in this Appeal is not exceptionable and hence following order:

“ The Criminal Appeal stands dismissed. Bailable warrants issued against each of the accused stands cancelled.”

(J.R. VORA, J.)

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